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FREDERIC S. KESSLER, P.J.Ch.

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SUNNYSIDE SENIOR HOUSING OF)	SUPERIOR COURT OF NEW JERSEY
WESTFIELD, L.L.C.,)	LAW DIVISION - UNION COUNTY
)	DOCKET NUMBER UNN-L-135-09
Plaintiff,)	
)	Civil Action
vs.)	
)	(<u>Mount Laurel II</u>)
TOWN OF WESTFIELD, ANDREW SKIBITSKY))	
(Mayor of the Town of Westfield),)	
TOWN COUNCIL OF THE TOWN OF)	DECLARATORY JUDGMENT OF FAIRNESS
WESTFIELD and PLANNING BOARD OF)	AND REASONABLENESS OF SETTLEMENT
THE TOWN OF WESTFIELD,)	
)	
Defendants.)	

This matter having been jointly opened to the court by: Stickel,
Koenig, Sullivan & Drill (Jonathan E. Drill, Esq., appearing) and
Dentons US LLP (Robert W. Cockren, Esq., appearing), attorneys for
defendants Town of Westfield, Mayor Andrew Skibitsky, and Town Council;
Lindabury, McCormick, Estabrook & Cooper (Kenneth Soriero, Esq.,
appearing), attorneys for the Planning Board of the Town of Westfield;
R. Marcel Pirtea, Esq., attorney for plaintiff; and Adam M. Gordon,

Esq., staff attorney with Fair Share Housing Center, a public interest organization representing the housing rights of New Jersey's poor; and the aforementioned parties having signed a Settlement Agreement dated December 11, 2012 (the "Settlement Agreement") settling Mount Laurel II litigation, which Settlement Agreement in paragraph 1 provides that the Settlement Agreement is contingent upon the Superior Court, Law Division (the "Court") (1) approving the Settlement Agreement after a "Fairness Hearing" conducted pursuant to East / West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and (2) granting a Declaratory Judgment of Compliance and Repose pursuant to N.J.S.A. 52:27D-313(a) after a "Compliance Hearing" (the Fairness Hearing and Compliance Hearing together referred to as the "hearing"); and East / West Venture, supra, at 326, holding that Mount Laurel litigation may be settled only after a finding by the Court that: (1) the settlement has apparent merit, (2) notice has been given to all members of the class and others who have an interest in the settlement, (3) a hearing has been conducted on the settlement where those affected have sufficient time to prepare; and (4) the settlement is "fair and reasonable to members of the protected class"; and the Court, having determined for the reasons set forth on the record on January 23, 2013 that the Settlement Agreement had apparent merit, entered an Order of Remand and Scheduling of a Fairness and Compliance Hearing on January 23, 2013 (the "Remand Order"), with the hearing being scheduled for June 10, 2013, and the Remand Order required Defendant Town of Westfield (the "Town") to provide notice of the hearing to various

specified parties at least 30 days prior to June 10, 2013 and that the notice be in the form approved by the Court and attached to the Remand Order; and the required notice having been provided to all required parties within the time ordered by the Court; and the Court having duly conducted the hearing on June 10, 2013; and the Court having found upon the conclusion of the hearing for the reasons set forth on the record on September 9, 2013 that all criteria set forth in East / West Venture have been satisfied; and the Court having further found for the reasons set forth on the record on September 9, 2013 that the Town's Compliance Plan, consisting of its 2013 Housing Plan Element and Fair Share Plan (the "2013 HPE&FSP") along with various attachments as well as various implementing ordinances (all such documents together referred to as the "2013 Compliance Plan"), all of which 2013 Compliance Plan documents were entered into evidence during the hearing as exhibits, create the realistic opportunity to achieve the Town's affordable housing obligation under Mount Laurel II; and the Court determining to settle an issue that has arisen regarding payment of the fees of the Court appointed Special Master; and the Court determining to enter a separate Declaratory Judgment of Fairness and Reasonableness of the Settlement with a provision for the payment of the Special Master's fees; and the Court determining to enter a separate Declaratory Judgment of Compliance and Repose; and the within order being the Declaratory Judgment of Fairness and Reasonableness;

IT IS THEREFORE ON THIS 7th OF OCTOBER, 2013, ADJUDGED, DECLARED AND ORDERED AS FOLLOW:

1. The Court hereby declares that the Settlement Agreement is approved as reasonable and fair to the interests of low and moderate income households as to the Sunnyside site as well as all other aspects of the Settlement Agreement.

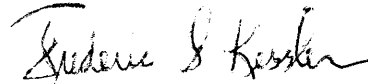
2. The Court specifically declares that the Sunnyside site is available, approvable, developable and suitable to produce affordable housing from a Mount Laurel perspective in accordance with N.J.A.C. 5:97-3.13, which the Court determines it should follow in accordance with Hills Development Co. v. Bernards Township, 103 N.J. 1, 63 (1986) (courts "should conform wherever possible to the decisions, criteria, and guidelines" adopted by COAH).

3. The Court also specifically declares that the proposed 16% affordable housing set aside for the Sunnyside site is fair and reasonable as the affordable housing will be rental units (4 units of the 24 units proposed on the site will be set aside for affordable rental housing).

4. Plaintiff and the Town shall pay the Court appointed Special Master's firm (Clarke Caton Hintz) Invoice Number 56818 dated June 12, 2013 within 30 days of the entry of the within Judgment in accordance with the terms of the Court's March 26, 2012 Order appointing the Special Master as follows: Plaintiff shall pay \$9,999.88 and the Town shall pay \$5,617.04. Any further costs and fees which the Special Master may charge in this matter shall be paid by the Town exclusively within 30 days of receipt of the Special Master's invoice(s).

5. The Court shall retain jurisdiction so as to ensure the

implementation of the within Judgment. Notwithstanding the retention of jurisdiction, the within Judgment is hereby declared to be a final judgment.

A handwritten signature in cursive script, reading "Frederic S. Kessler".

Frederic S. Kessler, P.J.Ch.